

1 DANIEL M. PETROCELLI (S.B. #97802)  
2 dpetrocelli@omm.com  
3 MOLLY M. LENZ (S.B. #283867)  
4 mlens@omm.com  
5 CAMERON H. BISCAY (S.B. #266786)  
6 cbiscay@omm.com  
7 O'MELVENY & MYERS LLP  
8 1999 Avenue of the Stars, 7th Floor  
9 Los Angeles, California 90067-6035  
10 Telephone: (310) 553-6700  
11 Facsimile: (310) 246-6779

12 Attorneys for Twentieth Century Fox  
13 Television, a division of Twentieth Century  
14 Fox Film Corporation, and Fox Broadcasting  
15 Company

16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**  
18 **WESTERN DIVISION**

19 TWENTIETH CENTURY FOX  
20 TELEVISION, a division of  
21 TWENTIETH CENTURY FOX FILM  
22 CORPORATION, a Delaware company,  
23 et al.

24 Plaintiffs,

25 v.

26 EMPIRE DISTRIBUTION, INC., a  
27 California corporation,

28 Defendant.

29 And related counterclaims

30 Case No. 2:15-cv-02158 PA(FFMx)

31 **DECLARATION OF ANDREW  
32 ROSS IN SUPPORT OF FOX'S  
33 MOTION FOR SUMMARY  
34 JUDGMENT**

35 **Judge:** Hon. Percy Anderson

36 **Hearing Date:** February 1, 2016

37 **Time:** 1:30 p.m.

38 **Place:** Courtroom 15

1 I, Andrew Ross, the undersigned, hereby declare:

2 1. I am Senior Vice President, Business and Legal Affairs, at Columbia  
3 Records, a division of Sony Music Entertainment. I submit this declaration in  
4 support of Twentieth Century Fox Television, a division of Twentieth Century Fox  
5 Film Corporation, and Fox Broadcasting Company's (collectively, "Fox") Motion  
6 for Summary Judgment. I have personal knowledge of the facts set forth herein  
7 and, if called to testify, could and would testify competently thereto.

8 2. With permission from Fox, Columbia Records acts as the record label  
9 for the *Empire* soundtrack music and distributes *Empire*'s original songs. In my  
10 role at Columbia Records, I work with Fox on the licensing, release, and marketing  
11 of the *Empire* soundtrack music.

12 3. The week each episode of *Empire* is broadcast, Columbia Records  
13 releases and distributes digital extended plays of the music from that episode  
14 ("Episode EPs"). For the first season, approximately ninety percent of the digital  
15 streaming and sales of the Episode EPs occurred in the four days following the  
16 episode's broadcast.

17 4. At the conclusion of *Empire*'s first season, Columbia Records also  
18 released and distributed an album containing select original songs appearing across  
19 *Empire*'s first season ("Season One Soundtrack"). The Season One Soundtrack  
20 debuted at number one on the Billboard 200 chart in the United States for the week  
21 of March 28, 2015. The Billboard 200 chart for the week of March 28, 2015 is  
22 attached hereto as **Exhibit 1**. The Season One Soundtrack is released and  
23 distributed with the album cover shown in **Exhibit 2**, which is a print out of  
24 Amazon.com's website for the Season One Soundtrack.

25 5. Columbia Records recently released and distributed a second album  
26 containing select original songs appearing across the first half of *Empire*'s second  
27 season (the "Season Two Soundtrack Volume 1"). The Season Two Soundtrack

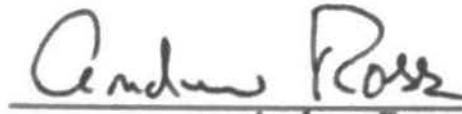
1 Volume 1 is released and distributed with the album cover shown in Exhibit 3,  
2 which is a print out of Amazon.com's website for the Season Two Soundtrack  
3 Volume 1.

4

5 I declare under penalty of perjury that the foregoing is true and correct.

6

7 Executed on December 14, 2015, at Chatham, Massachusetts.

8   
9 \_\_\_\_\_  
10 Andrew Ross

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 1**



# BILLBOARD 200

[How it works](#)

THE WEEK OF

&lt; MARCH 28, 2015 &gt;

[ARCHIVE  
SEARCH](#)

MM/DD/YYYY



1

**Empire: Original Soundtrack From Season 1**  
Soundtrack

New



2

**Rebel Heart**  
Madonna

New



3

EXHIBIT 1

<http://www.billboard.com/charts/billboard-200/2015-03-28>

12/11/2015

Pages 2-25 have been intentionally  
omitted per Scheduling Order,  
Dkt. 23 ¶ 5(a) at 4:12-17

# **EXHIBIT 2**

CDs & Vinyl ▼

Shop by Department ▼ Michael's Amazon.com Today's Deals Gift Cards Sell Hello, Michael Your Account ▼ Your Prime ▼ Your Lists ▼ 0 Cart

CDs & Vinyl Prime Music Digital Music New Releases Pre-orders Vinyl Records Best Sellers Today's Deals AutoRip Advanced Search



SKIP THE TRIP: GET **FREE** TWO-HOUR DELIVERY  
SHOP GROCERIES, ELECTRONICS, AND MORE [Get the App](#)

CDs & Vinyl > R&B > Soul



AutoRip ►

## Original Soundtrack from Season 1 of Empire

Empire Cast Format: Audio CD

574 customer reviews

[See all 5 formats and editions](#)

Streaming

MP3  
\$9.99

Audio CD  
\$8.64

17 Used from \$3.75  
69 New from \$6.36  
1 Collectible from \$18.00

Share

Buy New

\$8.64

Qty: 1 ▼

| FREE One-Day

Delivered tomorrow for FREE with qualifying orders over \$35. [Details](#)

In Stock.

Ships from and sold by Amazon.com. Gift-wrap available.

[Add to Cart](#)

[Turn on 1-Click ordering for this browser](#)

Want it tomorrow, Dec. 14? Order within **11 hrs 48 mins** and choose **Same-Day Delivery** at checkout. [Details](#)

Ship to:

Molly Lens- LOS ANGELES

[Add to List](#)

Other Sellers on Amazon

\$9.99

[Add to Cart](#)

Sold by: steelerfreak

87 used & new from \$3.75

Have one to sell? [Sell on Amazon](#)

Arrives before Christmas.

LET YOUR  
PRESENTS SING  
20 HIT MUSIC TITLES ON SALE NOW

### Frequently Bought Together



Total price: \$30.61

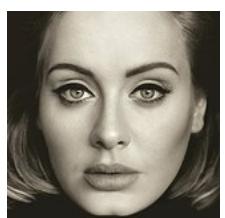
[Add all three to Cart](#)

[Add all three to List](#)

- This item: Original Soundtrack from Season 1 of Empire by Empire Cast Audio CD \$8.64
- Original Soundtrack Season 2 Volume 1 by Empire Cast Audio CD \$11.98
- 25 by Adele Audio CD \$9.99

Arrives before Christmas.

### Customers Who Bought This Item Also Bought



## EXHIBIT 2

Original Soundtrack Season 2 Volume 1	25 › Adele	Empire Season 1 Terrence Howard	Unbreakable › Janet Jackson	Woman Jill Scott
Empire Cast	2,298 #1 Best Seller in Music	1,539	324	374
22 Audio CD \$11.98	Audio CD \$9.99	DVD \$18.03	Audio CD \$9.99	Audio CD \$13.29



Calling All Lovers (Deluxe Edition)

› Tamar Braxton

191

Audio CD

\$13.96

### Special Offers and Product Promotions

- Includes FREE MP3 version of this album [Here's how](#) (restrictions apply)
- Save Big On Open-Box & Preowned:** Buy "Original Soundtrack from Season 1 of Empire" from Amazon Warehouse Deals and save 17% off the \$9.98 list price. Product is eligible for Amazon's 30-day returns policy and Prime or FREE Shipping. [See all Open-Box & Preowned offers from Amazon Warehouse Deals](#).
- Thank you for being a Prime member. **Earn 5% Back Every Day** with the Amazon Prime Store Card. [Apply now](#).

### Editorial Reviews

Original soundtrack to the hit Fox TV series. Empire is the sexy and powerful drama about the head of a music empire whose three sons and ex-wife all battle for his throne. The show stars Terrence Howard, Taraji P. Henson, newcomers Bryshere Grey, and Jussie Smollett. Timbaland serves as music supervisor and each episode features new original music. Guest artists with cameos on the show and contributing music include Estelle, Courtney Love, Anthony Hamilton, Jennifer Hudson, Mary J. Blige, Snoop Dogg and others.



Sample this album

1	Good Enough (feat. Jussie Smollett)	3:50	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
2	What Is Love (feat. V. Bozeman)	2:53	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
3	No Apologies (feat. Jussie Smollett, Yazz)	2:52	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
4	Keep It Movin' (feat. Serayah McNeill and Yazz)	3:24	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
5	Walk Out On Me (feat. Courtney Love)	3:25	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
6	Conqueror (feat. Estelle and Jussie Smollett)	4:28	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
7	Remember The Music (feat. Jennifer Hudson)	3:23	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
8	Shake Down (feat. Mary J. Blige and Terrence Howard)	3:26	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
9	Power Of The Empire (feat. Yazz)	3:17	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
10	Nothing To Lose (feat. Jussie Smollett)	2:48	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
11	Whatever Makes You Happy (feat. Jennifer Hudson and Juicy J)	3:15	<a href="#">+ Add to Library</a>	<input type="checkbox"/>

Sold by SONY Music Entertainment Downloads LLC.. Additional taxes may apply. By placing your order, you agree to our [Terms of Use](#).

### EXHIBIT 2

[6](http://www.amazon.com/Original-Soundtrack-Season-1-Empire/dp/B00TKNQQHO/ref=...) 12/13/2015

**Product Details****Audio CD** (March 10, 2015)**Number of Discs:** 1**Label:** Columbia**ASIN:** B00TKNQQHO**Average Customer Review:** (574 customer reviews)**Amazon Best Sellers Rank:** #177 in Music (See Top 100 in Music)#3 in Music > Soundtracks > **Television Soundtracks**#7 in Music > R&B > **Soul**#173 in Music > **Pop**Would you like to [update product info](#) or [give feedback on images](#)?**Related Video Shorts**

Empire Cast - No Apologies



Empire Cast - You're So Beautiful



Empire Cast - Hourglass (feat. V. Bozeman)...



Empire Cast - Money For Nothing (feat. Terrence....)



Empire Cast - Snitch Bitch (feat. Terrence...

**Amazon's Empire Cast Store**[Visit Amazon's Empire Cast Store](#)  
for all the music, discussions, and more.**Customer Reviews**

574

4.2 out of 5 stars

5 star	61%	Share your thoughts with other customers
4 star	12%	
3 star	15%	
2 star	7%	
1 star	5%	

[Write a customer review](#)[See all 574 customer reviews](#)**Most Helpful Customer Reviews**

188 of 194 people found the following review helpful

**FYI: The CD version only has 11 songs**By [Grapes McFadden](#) on March 10, 2015Format: Audio CD **Verified Purchase**

The music is great, of course, but as a heads up, the CD is missing a buuuunch of the songs you would get if you bought the mp3 version. If I had known I wasn't going to get Money for Nothing, Drip Drop, or You're So Beautiful, I would've just bought the mp3s instead.

CD Tracklist:

1. Good Enough
2. What is Love
3. No Apologies
4. Keep It Movin'
5. Walk Out On Me
6. Conqueror
7. Remember the Music
8. Shake Down
9. power of the Empire
10. Nothing to Lose
11. Whatever Makes You Happy

[10 Comments](#) Was this review helpful to you?   [Report abuse](#)

48 of 54 people found the following review helpful

**Do it for the music...****EXHIBIT 2**

Pages 4-7 have been intentionally  
omitted per Scheduling Order,  
Dkt. 23 ¶ 5(a) at 4:12-17

# **EXHIBIT 3**

CDs & Vinyl ▾

Shop by Department ▾ Michael's Amazon.com Today's Deals Gift Cards Sell Help Hello, Michael Your Account ▾ Your Prime ▾ Your Lists ▾ 0 Cart

CDs & Vinyl Prime Music Digital Music New Releases Pre-orders Vinyl Records Best Sellers Today's Deals AutoRip Advanced Search Your Music Library

**Prime Now** **\$20 OFF MILK, COOKIES, AND MORE** WITH FREE 2-HOUR DELIVERY [Learn more](#)

CDs &amp; Vinyl ▾ Soundtracks ▾ Television Soundtracks



## Original Soundtrack Season 2 Volume 1

Empire Cast (Artist) Format: Audio CD

22 customer reviews

See all 3 formats and editions

Streaming

MP3  
\$14.99Audio CD  
\$11.9810 Used from \$8.78  
40 New from \$7.75  
1 Collectible from \$20.00

Share

Buy New

\$11.98

Qty: 1 ▾

| FREE One-Day

Delivered tomorrow for FREE with qualifying orders over \$35. [Details](#)

In Stock.

Ships from and sold by Amazon.com. Gift-wrap available.

Add to Cart

[Turn on 1-Click ordering for this browser](#)Want it tomorrow, Dec. 14? Order within **14 hrs 22 mins** and choose **Same-Day Delivery** at checkout. [Details](#)

Ship to:

Molly Lens- LOS ANGELES

Buy Used

\$8.78

Add to List

Other Sellers on Amazon

51 used &amp; new from \$7.75

Have one to sell?

Sell on Amazon

Arrives before Christmas.



## Frequently Bought Together



Total price: \$30.61

Add all three to Cart

Add all three to List

This item: Original Soundtrack Season 2 Volume 1 by Empire Cast Audio CD \$11.98

Original Soundtrack from Season 1 of Empire by Empire Cast Audio CD \$8.64

25 by Adele Audio CD \$9.99

## Customers Who Bought This Item Also Bought

Page 1 of 21

Arrives before Christmas.



Original Soundtrack from Season 1 of Empire  
Empire Cast

574  
Audio CD

\$8.64



25  
Adele  
#1 Best Seller in Music  
2,298  
Audio CD  
\$9.99



Empire Season 1  
Terrence Howard  
DVD  
1,539

\$18.03

## Special Offers and Product Promotions

## EXHIBIT 3

• Thank you for being a Prime member. **Earn 5% Back Every Day** with the Amazon Prime Store Card. [Apply now.](#)

## Editorial Reviews

From the mega hit FOX show EMPIRE comes 'Empire: Original Soundtrack, Season 1's chart-topping soundtrack. This collection features songs from the first half of Season 2 and showcases cast members Jussie Smollett (Jamal Lyon) and Yazz (Hakeem Lyon), alongside Terrence Howard (Lucious Lyon) and guest stars Timbaland, Pitbull, Alicia Keys, Bre Z, V. Bozeman and Serayah. The soundtrack was produced by Timbaland, NE-YO, J.R. Rotem and Swizz Beatz.

The soundtrack includes multiple stand-out songs such as the upbeat party track "No Doubt About It," the emotional ballad "Born To Love U," the club anthem "Bout 2 Blow," and the duet by Jussie and Alicia Keys "Powerful."

'Original Soundtrack from Season 1 of Empire' was released in March 2015 and debuted at No. 1 on the Billboard Top 200 chart, making history as the first soundtrack to debut atop the Billboard R&B/Hip Hop chart. To date, the soundtrack has sold over 2 million singles and is approaching half a million albums. The Lyon brothers brought the music to life performing hits from the soundtrack on the 2015 Billboard Music Awards, The Ellen DeGeneres Show, Good Morning America, American Idol, Teen Choice Awards, BET Awards and The View. The 'Original Soundtrack from Season 1 of Empire' received its first nomination for "Top Soundtrack" at the 2015 American Music Awards.



Sample this album

1	<b>Born To Love U (feat. Jussie Smollett)</b>	3:35	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
2	<b>Snitch Bitch (feat. Terrence Howard and Petey Pablo)</b>	3:48	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
3	<b>Hourglass (feat. V. Bozeman)</b>	3:45	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
4	<b>Get No Better (2.0) (feat. Serayah)</b>	2:48	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
5	<b>Bout 2 Blow (feat. Yazz and Timbaland)</b>	3:01	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
6	<b>No Doubt About It (feat. Jussie Smollett and Pitbull)</b>	4:45	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
7	<b>Ain't About The Money (feat. Jussie Smollett and Yazz)</b>	3:12	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
8	<b>Never Love Again (feat. Jussie Smollett)</b>	4:03	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
9	<b>Runnin' (feat. Yazz, Jamila Velazquez, Raquel Castro, and Yani Marin)</b>	2:56	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
10	<b>Boom Boom Boom Boom (feat. Terrence Howard and Bre-Z)</b>	3:37	<a href="#">+ Add to Library</a>	<input type="checkbox"/>
11	<b>Heavy (feat. Jussie Smollett)</b>	2:57	<a href="#">+ Add to Library</a>	<input type="checkbox"/>

Sold by SONY Music Entertainment Downloads LLC.. Additional taxes may apply. By placing your order, you agree to our [Terms of Use](#).

## Product Details

**Audio CD** (November 20, 2015)

**Number of Discs:** 1

**Label:** Columbia

**ASIN:** B016Z7SUEE

**Average Customer Review:** (22 customer reviews)

**Amazon Best Sellers Rank:** #114 in Music (See Top 100 in Music)

#2 in [Music](#) > [Soundtracks](#) > [Television Soundtracks](#)

#112 in [Music](#) > [Pop](#)

Would you like to [update product info](#) or [give feedback on images](#)?

## Related Video Shorts

<input type="checkbox"/>		<b>Empire Cast - No Apologies</b>	<input type="checkbox"/>		<b>Empire Cast - You're So Beautiful</b>	<input type="checkbox"/>		<b>Empire Cast - Hourglass (feat. V. Bozeman)...</b>	<input type="checkbox"/>		<b>Empire Cast - Money For Nothing (feat....)</b>	<input type="checkbox"/>		<b>Empire Cast - Snitch Bitch (feat. Terrence....)</b>	<input type="checkbox"/>		<b>Empire Cast - Heavy (feat. Jussie Smollett)</b>	<input type="checkbox"/>
--------------------------	--	-----------------------------------	--------------------------	--	--	--------------------------	--	--	--------------------------	--	---	--------------------------	--	--	--------------------------	--	--	--------------------------

Page 1 of 2

## EXHIBIT 3

Pages 3-6 have been intentionally  
omitted per Scheduling Order,  
Dkt. 23 ¶ 5(a) at 4:12-17